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**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF NEVADA**

In re:  
  
LAS VEGAS MONORAIL COMPANY,  
  
Debtor.

Case No.: 10-10464-BAM  
Chapter 11

Date: May 19, 2010  
Time: 9:30 a.m.

**DEBTOR'S MOTION FOR AN ORDER EXTENDING THE EXCLUSIVE PERIODS TO FILE ITS PLAN OF REORGANIZATION AND SECURE ACCEPTANCE OF ITS PLAN OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1121(d)**

Las Vegas Monorail Company, a Nevada non-profit corporation ("Debtor" or "LVMC"), debtor and debtor-in-possession, by and through its counsel, the law firm of Gordon Silver, hereby moves this Court for an order approving *Debtor's Motion For An Order Extending The Exclusive Periods To File Its Plan of Reorganization and Secure Acceptance of Its Plan of Reorganization Pursuant To 11 U.S.C. § 1121(d)* (the "Motion"),<sup>1</sup> and extending the period in which Debtor has the exclusive right to file its plan of reorganization for an additional time period up to and including **August 17, 2010**. Debtor further requests that the Court extend the 180-day period for securing acceptance of the plan by an additional time period up to and

<sup>1</sup> All references to "Section" herein shall be to the Bankruptcy Code appearing in Title 11 of the U.S. Code; all references to a "Bankruptcy Rule" shall refer to the Federal Rules of Bankruptcy Procedure; and all references to a "Local Rule" shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

1 including **October 18, 2010**. Debtor's exclusive period to file its plan of reorganization  
 2 currently expires on May 19, 2010.

3 The Motion is made and based on the points and authorities herein, the *Omnibus*  
 4 *Declaration of Curtis L. Myles, III In Support of Debtor's First Day Motions* (the "Omnibus  
 5 Declaration"),<sup>2</sup> the *Declaration of Curtis L. Myles, III In Support of Debtor's Motion For An*  
 6 *Order Extending The Exclusive Periods To File Its Plan of Reorganization and Secure*  
 7 *Acceptance of Its Plan of Reorganization Pursuant To 11 U.S.C. § 1121(d)* (the "Myles  
 8 Exclusivity Declaration"), the *Declaration of Gabrielle A. Hamm In Support of Debtor's Motion*  
 9 *For An Order Extending The Exclusive Periods To File Its Plan of Reorganization and Secure*  
 10 *Acceptance of Its Plan of Reorganization Pursuant To 11 U.S.C. § 1121(d)* (the "Hamm  
 11 Declaration"), the papers and pleadings on file, judicial notice of which is respectfully requested,  
 12 and the argument of counsel entertained by the Court at the time of any hearing of the Motion.

### 13 I. 14 INTRODUCTION

15 1. On January 13, 2010 (the "Petition Date"), the Debtor filed its voluntary petition for  
 16 relief under Chapter 11 of the Bankruptcy Code.<sup>3</sup>

17 2. The Debtor continues to operate its business as debtor and debtor-in-possession  
 18 pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

19 3. No request has been made for the appointment of a trustee or examiner, and no  
 20 official committees have yet been established in this bankruptcy case (the "Chapter 11 Case").

### 21 II. 22 JURISDICTION AND VENUE

23 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.  
 24 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (L), and (O).

25 5. The statutory basis for the relief sought herein arises from Section 1121 of the

26 <sup>2</sup> All capitalized terms not otherwise defined herein shall have those meanings as in the Omnibus Declaration.

27 <sup>3</sup> All references to "Section" herein shall be to the Bankruptcy Code appearing in Title 11 of the U.S. Code; all  
 28 references to a "Bankruptcy Rule" shall refer to the Federal Rules of Bankruptcy Procedure; and all references to a  
 "Local Rule" shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of  
 Nevada.

1 Bankruptcy Code.

2 6. Venue of the Debtor's Chapter 11 Case in this District is proper pursuant to 28 U.S.C.  
3 §§ 1408 and 1409.

4 **III.**  
5 **BACKGROUND**

6 **A. Operations of the Monorail**

7 7. LVMC is a special purpose Nevada not-for-profit corporation organized for the  
8 purpose of developing, acquiring, constructing, operating and improving the Las Vegas Monorail  
9 (the "Monorail"). In 2000, upon the formation of LVMC, LVMC acquired the original Monorail  
10 system from MGM Grand-Bally's Monorail LLC and commenced extension of the system to its  
11 current state of seven stations. Omnibus Declaration, ¶ 7.

12 8. The Monorail is a state-of-the-art, fully-automated, driverless rail system that runs  
13 above the streets along the east-side of Las Vegas Boulevard (a/k/a the "Las Vegas Strip"). It is  
14 the first driverless public monorail system in the world. The existing operations provide  
15 convenient and cost-effective transportation between its seven stations. LVMC's business  
16 focuses on making the Monorail an easy and convenient connection to the Las Vegas Strip and  
17 the Las Vegas Convention Center. Omnibus Declaration, ¶ 11.

18 9. Though LVMC benefits from a tax exemption due its nonprofit status, it is the first  
19 privately-owned public transportation system in the nation to fund its operations solely by fares  
20 and advertising. No other U.S. public transit system finances its operations solely through fare  
21 and advertising revenues. LVMC receives no governmental financial support or subsidies.  
22 Omnibus Declaration, ¶ 12.

23 10. The Monorail currently has seven stations along a 3.9-mile route: MGM Grand,  
24 Bally's/Paris Las Vegas; Flamingo/Caesars Palace; Harrah's/Imperial Palace; Las Vegas  
25 Convention Center; Las Vegas Hilton; and the Sahara. It travels the 3.9-mile route in 15 minutes  
26 or less, and reaches speeds of up to 50 miles per hour. It is capable of moving 3,200 passengers  
27 per hour in each direction. The Monorail operates 365 days per year, 19 hours per day during the  
28 week and 20 hours each day Friday through Sunday. Omnibus Declaration, ¶ 13.

1 11. Other facts regarding the background of this Chapter 11 Case are contained in the  
2 Omnibus Declaration, which is incorporated herein in its entirety.

3 12. Since the commencement of this case, the Debtor has: (a) taken necessary steps to  
4 stabilize and run its business operations more efficiently so as to retain the value as a going  
5 concern; (b) commenced a thorough review and analysis of its executory contracts; (c) engaged  
6 in an extensive analysis of its real and personal property interests; (d) ensured that its creditors  
7 have been kept current for obligations incurred post petition; and (e) provided ongoing  
8 communications to all interested creditors to ensure they are informed of key actions taken by  
9 Debtors during this bankruptcy proceeding. Myles Exclusivity Declaration, ¶ 4.

10 13. At the outset of its Chapter 11 case, Debtor committed itself to: (a) maximize the  
11 value of its assets as a going concern; (b) cooperate with its creditors and all other involved  
12 parties; and (c) conclude this bankruptcy case as quickly and cost effectively as possible. Debtor  
13 continues to hold firm to this commitment. Myles Exclusivity Declaration, ¶ 5.

14 14. Immediately following the commencement of this Chapter 11 Case, Ambac  
15 Assurance Corporation ("Ambac") filed the *Motion of Ambac Assurance Corporation for*  
16 *Dismissal of Chapter 11 Proceeding Pursuant to 28 U.S.C. § 1334 and Sections 109(d) and*  
17 *1112(b) of the Bankruptcy Code* [Docket No. 8] (the "Dismissal Motion"). Also immediately  
18 following the commencement of this Chapter 11 Case, Wells Fargo Bank, N.A., the Indenture  
19 Trustee under the 1st Tier Bonds, the 2nd Tier Bonds, and the Subordinate Bonds (the "Trustee")  
20 filed the *Indenture Trustee's Objection to Use of Cash Collateral and Motion for Adequate*  
21 *Protection Pursuant to 11 U.S.C. 361, 363(c)(2) and 363(e)* [Docket No. 13] (the "Cash  
22 Collateral Objection").

23 15. The Dismissal Motion and the Cash Collateral Objection imposed significant burdens  
24 on the Debtor and the Debtor's counsel during the first 30 days of the case. Approximately ten  
25 (10) depositions were taken during an approximately three-week period in connection with the  
26 Dismissal Motion and the Cash Collateral Motion. See Hamm Declaration, ¶ 3; Myles  
27 Exclusivity Declaration, ¶ 6. Moreover, the Debtor submitted extensive briefing in response to  
28 the Dismissal Motion and the Cash Collateral Motion, as the Court is aware. As a result of these

1 contested matters and the uncertainties raised as a result of the motions, the Debtor was unable to  
 2 devote time or resources to the formulation of a plan during the first 30 days of this Chapter 11  
 3 Case. Myles Exclusivity Declaration, ¶ 6.

4 16. As of this date the Court has not decided either motion. In light of the possibility that  
 5 this Chapter 11 Case could be dismissed, it is not an effective use of the Debtor's resources to  
 6 formulate a plan of reorganization until the Court has issued its ruling on the Dismissal Motion.  
 7 Myles Exclusivity Declaration, ¶ 7. Moreover, a ruling determining the extent of the Trustee's  
 8 cash collateral, and specifically, the extent of the Trustee's interest, if any, in postpetition  
 9 revenues generated by the Debtor, will have a significant impact on any plan of reorganization.  
 10 Id. It is not realistic to negotiate a plan of reorganization with the Trustee and the 1st Tier  
 11 Bondholders until the Dismissal Motion and the extent of the Trustee's rights to post-petition  
 12 cash proceeds as cash collateral are determined. Id. Therefore, until such time as the Court  
 13 issues its rulings, the Debtor cannot commence serious negotiations to reach a viable conclusion  
 14 to this Chapter 11 Case. Id.

15 17. Further, as Ambac has recently disclosed to the Court, Ambac has transferred the  
 16 Surety Bond and the Insurance Policy to a "Segregated Account" purportedly created at the  
 17 direction of, and under the control and management of, the Office of the Wisconsin  
 18 Commissioner of Insurance (the "Commissioner"), and which is now subject to rehabilitation  
 19 proceedings (the "Rehabilitation") in the Circuit Court for Dane County, Wisconsin. See Ambac  
 20 *Assurance Corporation's Opposition to Debtor's Motion for Administrative Order Establishing*  
 21 *Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals*  
 22 *[Docket No. 313] ("Ambac Opposition"), n.1; Order for Rehabilitation, Case No. 10CV1576, a*  
 23 *true and correct copy of which is attached to the Debtor's Omnibus Reply to the Oppositions*  
 24 *Filed by: (1) Wells Fargo Bank, N.A., as Indenture Trustee, (2) Ambac Assurance Corporation,*  
 25 *and (3) the Director of the State of Nevada, Department of Business and Industry, to the*  
 26 *Debtor's Motion for Administrative Order Establishing Procedures for Interim Monthly*  
 27 *Compensation and Reimbursement of Expenses of Professionals* (the "Reply") as Exhibit 6.

18 18. The Dane County Circuit Court, in addition to placing the Insurance Policy and

1 Surety Bond in the Rehabilitation, entered an injunction against the payment of any moneys to  
 2 the 1st Tier Bondholders for an initial period of 6 months. See Ambac Opposition; *Order for*  
 3 *Temporary Injunctive Relief*, Case No. 10CV1576, a true and correct copy of which is attached  
 4 to the Reply as Exhibit 7.

5 19. Following the transfer of the Insurance Policy and the Surety Bond to the  
 6 Rehabilitation, the Trustee filed its *Notice of Motion and Motion by Wells Fargo Bank, National*  
 7 *Association, in its Capacity as Trustee for the Benefit and Protection of Certain Bondholders, to*  
 8 *Modify Injunction Order and to Intervene* (the “Modification Motion”) and its *Brief by Wells*  
 9 *Fargo Bank, National Association, in its Capacity as Trustee for the Benefit and Protection of*  
 10 *Certain Bondholders, in Support of its Motion to Modify Temporary Injunction Order and to*  
 11 *Intervene* (the “Modification Brief”), true and correct copies of which are attached to the Reply  
 12 as Exhibits 9 and 10, respectively.

13 20. In the Modification Brief, the Trustee argues that the transfer of the Insurance Policy  
 14 and the Surety Bond to the Segregated Account was illegal on multiple grounds, and that the  
 15 Insurance Policy and Surety Bond should be removed from the Segregated Account and returned  
 16 to Ambac’s general account. See generally Modification Brief. Specifically, the Trustee has  
 17 asserted that the Senior Bonds and the Subordinate Bonds in this Chapter 11 Case are the only  
 18 “municipal” bond insurance contracts Ambac transferred to the Segregated Account, and that all  
 19 other insurance contracts transferred to the Segregated Account relate to credit default swaps,  
 20 residential mortgage-backed securities, and similar toxic risks. Id.

21 21. In sum, the Trustee asserts that Ambac and the Commissioner violated both federal  
 22 and Wisconsin law by transferring all of Ambac’s “bad” insurance policies to an  
 23 undercapitalized Segregated Account while keeping all of Ambac’s “good” insurance policies  
 24 and all of its assets in its general account. Id. The Trustee, pointing out that the Segregated  
 25 Account is capitalized only with a non-marketable \$2 billion note with questionable value issued  
 26 by Ambac, and that “no creditor without notice of consultation would elect to exchange an  
 27 obligor holding \$8.5 billion in assets for one with no cash, marketable securities or other liquid  
 28 assets,” argues that the gross undercapitalization of the Segregated Account not only violates the

1 plain language of the applicable Wisconsin statute, but that it (i) was an unconstitutional taking  
 2 of the Bondholders' property under the Fifth Amendment and (ii) violated the due process rights  
 3 of the Bondholders under the Fourteenth Amendment. Id. The Trustee further contends that the  
 4 Commissioner's actions contravene the Equal Protection Clauses of the Fourteenth Amendment  
 5 and Wisconsin law because the 1st Tier Bondholders were treated differently than other  
 6 "municipal" bondholders. Id.

7 22. The Dane County Circuit Court has not ruled on the Trustee's Modification Motion.  
 8 See Hamm Declaration, ¶ 4.

9 23. Pursuant to Section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right  
 10 to file a plan of reorganization for the first 120 days of the case (the "Exclusivity Period"). In  
 11 this case, the Exclusivity Period expires on May 19, 2010, and the 180-day exclusive period for  
 12 securing acceptance of the plan expires on July 20, 2010. Pursuant to Section 1121(d), Debtor is  
 13 requesting an extension of the Exclusivity Period based upon the need for additional time to  
 14 reach a resolution regarding the restructuring of the Debtor's debts. Myles Exclusivity  
 15 Declaration, ¶ 8.

16 24. By this Motion Debtor is seeking to extend the Exclusivity Period for the filing of  
 17 Debtor's plan of reorganization up to and including August 17, 2010. Debtor also requests that  
 18 the Court extend the 180-day exclusive period for securing acceptance of the plan up to and  
 19 including October 18, 2010. The Debtor further requests that such order be without prejudice to  
 20 the Debtor's right to seek further extensions.

21 25. Notice of this Motion has been provided to (i) Office of the United States Trustee and  
 22 (ii) those parties which have filed notices of appearance in this case. Debtor submits that no  
 23 other or further notice need be given.

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IV.  
**LEGAL AUTHORITY**

Section 1121 of the Bankruptcy Code authorizes a court to extend the time period within which a debtor may file a plan of reorganization. Section 1121 provides in pertinent part:

(d) On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. 1121(d) (emphasis added).

The decision to extend a debtor's exclusive filing period is committed to the sound discretion of the bankruptcy court, based upon the facts and circumstances of each particular case. See, e.g., First American Bank of New York v. Southwest Gloves and Safely Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986).

Courts apply the term "cause" flexibly in order to allow the debtor adequate time to reach an agreement with creditors on a plan. In re McClean Industries, Inc., 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987) (quoting H.R. Rep. No. 595, 95th Cong., 2d Session 231 (1978), U.S. Code Cong. & Admin. News, 1978, pp. 5963, 6190). The legislative history of section 1121 makes it clear that Congress intended to grant courts the discretion to extend the Exclusivity Period to meet the needs and circumstances of the debtor:

The Court is given the power, though, to increase or reduce the [exclusivity period] depending on the circumstances of the case. For example, if an unusually large company were to seek reorganization under Chapter 11, the Court would probably need to extend the time in order to allow the debtor to reach an agreement.

H.R. Rep. No. 95-595, 95th Cong., 1st Session 231-32 (1978) (citations omitted).

In interpreting section 1121, courts consider various factors, including: (i) the size and complexity of the debtor's case, In re Perkins, 71 B.R. 294, 297-99 (Bankr. W.D. Tenn. 1987); In re United Press International, Inc., 60 B.R. 265, 269 (Bankr. D.C. 1986); (ii) the existence of good faith progress toward reorganization, In re Pine Run Trust, Inc., 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986); In re Swatara Coal Co., 49 B.R. 898, 900 (Bankr. E.D. Pa. 1985); and (iii) the existence of an unresolved contingency, In re Swatara Coal Co., 49 B.R. at 899-900.

The key factor in determining whether to grant extension of the Exclusivity Period is



whether the debtor-in-possession has had “a reasonable period in light of the bankruptcy case in its entirety” to formulate, propose, and solicit the required acceptances of a plan. In re McClean Industries, Inc., 87 B.R. at 834. In a “large and complex case requiring tremendous coordination to administer ...[i]t is not unreasonable for a [debtor] to request an extension to make intelligent, informed decisions with respect to the direction and future of the business.” In re Service Merchandise Co., Inc., 256 B.R. 744, 752 (Bankr. M.D. Tenn. 2000). See also In re United Press International Inc., 60 B.R. at 269 (allowing a three-month extension of the exclusivity period to file a plan where the debtor had shown diligence in moving quickly in a complex case with multiple adversary proceedings).

The Debtor respectfully submits that cause exists for the extension requested herein. The Court is well aware that the first 30 days of the Debtor’s Chapter 11 Case were devoted to defending against the Dismissal Motion and the Cash Collateral Objection. As of this date the Court has not decided either motion. As a result of these contested matters, the Debtor was unable to devote time or resources to the formulation of a plan during the first 30 days of this Chapter 11 Case.

In light of the possibility that this Chapter 11 Case could be dismissed, it is not an effective use of the Debtor’s resources to formulate a plan of reorganization at this time. Moreover, a ruling determining the extent of the Trustee’s cash collateral, and specifically, the extent of the Trustee’s interest, if any, in postpetition revenues generated by the Debtor, will have a significant impact on any plan of reorganization. It is not realistic to negotiate a plan of reorganization with the Trustee and the 1st Tier Bondholders until the Dismissal Motion and the extent of the Trustee’s rights to post-petition cash proceeds as cash collateral are determined. Therefore, until such time as the Court issues its rulings, the Debtor cannot commence serious negotiations to reach a viable conclusion to this Chapter 11 Case.

Finally, despite Ambac’s extremely active participation in this Chapter 11 Case to date, its standing and role in this case have become unclear, along with the availability of the proceeds of the Insurance Policy and Surety Bond purchased by the Debtor for the benefit of the 1st Tier Bondholders. As discussed above, Ambac has transferred the Surety Bond and the Insurance

1 Policy to the Segregated Account purportedly created at the direction of, and under the control  
2 and management of, the Commissioner, and the Segregated Account is now the subject of the  
3 Rehabilitation in the Circuit Court for Dane County, Wisconsin.

4 Ambac, now merely the manager of the Surety Bond and the Insurance Policy, may have  
5 no or limited authority to negotiate or act on its own behalf in connection with the Insurance  
6 Policy or the Surety Bond. The Commissioner has some role now with regard to the Insurance  
7 Policy and the Surety Bond. Consequently, despite Ambac's contention that it is still relevant to  
8 this Chapter 11 Case, the parties with a role in negotiating a plan of reorganization may have  
9 changed.

10 Given the uncertainty regarding any future payments under either the Insurance Policy or  
11 the Surety Bond, the 1st Tier Bondholders and the Trustee likely have changed their perspective  
12 regarding negotiations with the Debtor regarding a restructuring of the 1st Tier Bonds.

13 As a result of these issues, the Debtor has not had a reasonable period, in light of the  
14 bankruptcy case in its entirety, to formulate, propose, and solicit the required acceptances of a  
15 plan.

16 Aside from the delays and events discussed above, the Debtor has been diligent and has  
17 shown good faith in progressing towards a successful conclusion to this case. Over the past three  
18 months the Debtor has: (a) taken necessary steps to stabilize and run its business operations  
19 more efficiently so as to retain the value as a going concern; (b) commenced a thorough review  
20 and analysis of its executory contracts; (c) engaged in an extensive analysis of its real and  
21 personal property interests; (d) ensured that its creditors have been kept current for obligations  
22 incurred post petition, and (e) provided ongoing communications to all interested creditors to  
23 ensure they are informed of key actions taken by Debtors during this bankruptcy proceeding.

24 At the outset of its Chapter 11 case, Debtor committed itself to: (a) maximize the value  
25 of its assets as a going concern; (b); cooperate with its creditors and all other involved parties  
26 and (c) conclude this bankruptcy case as quickly and cost effectively as possible. Debtor  
27 continues to hold firm to this commitment. Debtor respectfully submits that it should be entitled  
28 to complete this process in a cost effective and timely manner without the very real risk of

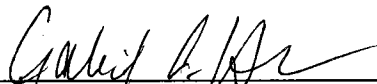
1 further uncertainty and delay associated with a lapse of the Exclusivity Period.

2 **V.**  
3 **CONCLUSION**

4 WHEREFORE, Debtor respectfully requests that the Court enter an Order (i) extending  
5 the Exclusivity Period for the filing of Debtor's plan of reorganization for an additional time  
6 period up to an including August 17, 2010 and (ii) extending the 180-day period Debtor has for  
7 securing acceptance of its plan of reorganization up to an including October 18, 2010. Debtor  
8 seeks such other relief as the Court deems just and proper.

9 DATED this 21st day of April, 2010.

10 GORDON SILVER

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